

APPEAL NO. 022900
FILED DECEMBER 23, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 23, 2002. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury with a date of injury of _____, and that the respondent (self-insured) was relieved from liability under Section 409.002 because the claimant failed to timely notify his employer pursuant to Section 409.001 and did not have good cause for failing to do so. The claimant appealed on sufficiency grounds and the self-insured responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable repetitive trauma injury with a date of injury of _____. The claimant and two of his doctors testified that the claimant's diagnosed mild bilateral carpal tunnel syndrome (CTS) was caused by the claimant's repetitive activities at work in operating heavy machinery. Both doctors testified that they based their causation conclusion on the medical history given by the claimant, and that they did not know about the claimant's prior CTS and surgery on his right wrist seven years before the alleged date of injury. The self-insured presented the testimony of two employees involved in the process of reporting and documenting employees' injuries, and neither witness had knowledge of the claimant's alleged CTS work injury until November 2001. The hearing officer noted that the medical records do not show the claimant being treated for CTS from March through November 2001. The hearing officer noted that there "is not a shred of evidence" to show that the claimant's CTS was a result of his work.

The hearing officer did not err in determining that the self-insured was relieved from liability under Section 409.002 because the claimant failed to timely notify his employer pursuant to Section 409.001. The claimant testified that his date of injury was _____, and that he first reported his injury to his employer on or about March 9, 2001. Again, the claimant produced no documentary evidence to suggest that he had reported his injury to his employer in March 2001, and the employer's witnesses swore that the claimant did not report his alleged injury until November 2, 2001. The hearing officer notes that "if anyone believed in March of 2001 that the Claimant had sustained a bilateral [CTS] injury, neither the treating doctor, the associated chiropractors, the Claimant, nor the Employer took any action on it."

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and

credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We do not find so here.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**COMPANY
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Veronica Lopez
Appeals Judge